

President with the consent of the Senate, and the Federal judiciary (District, Circuit, and Supreme Court judges and justices only; all other positions within the Federal judiciary shall be considered under the provisions of paragraph (e)(3) of this section). For the purposes of the definition contained in this paragraph, the terms “heads of Federal agencies” does not include any person appointed by the President with the consent of the Senate to a Federal agency as a member of a multimember board or commission. Positions occupied by such persons may be designated as key positions only by the application of the criteria set forth in § 44.5(b)(2) of this part.

(3) Other Federal positions determined by Federal agency heads, or their designees, to be key positions in accordance with the guidelines specified in § 44.5(b)(2) of this part.

(f) *Ready Reserve*. Units and individual reservists liable for active duty as outlined in 10 U.S.C. 672 and 673.

(g) *Selected Reserve*. Part of the Ready Reserve of each reserve component consisting of units and individuals who participate actively in paid training periods and serve on paid active duty for training each year.

(h) *Standby Reserve*. Units or members of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty as provided in sections 672 and 674 of title 10, U.S.C.

§ 44.4 Policy.

It is DoD policy that members of the Selected Reserve and other Ready Reservists who are not on active duty shall be screened at least annually to provide a Ready Reserve force composed of members who:

(a) Meet Military Service wartime standards of mental, moral, professional, and physical fitness.

(b) Possess the military qualifications required in the various ranks, grades, ratings, and specialties.

(c) Are available immediately for active duty during a mobilization (or during a war or national emergency or in response to a presidential order to augment the active forces for an operational mission).

§ 44.5 Procedures.

(a) *Reserve component screening activities*. The following general procedures shall be followed to ensure the immediate availability of a Ready Reserve force:

(1) *Annual screening*. All Ready Reservists shall be screened at least annually to ensure their availability. Upon mobilization, all screening activity ceases, and all those remaining in the Ready Reserve shall be considered immediately available for active duty service.

(2) *Maintaining current data*. The development and maintenance of current information pertaining to the mobilization availability of Ready Reservists shall be the responsibility of the Secretary of the Military Department concerned.

(3) *Civilian employment*. After a mobilization is ordered, no deferment, delay, or exemption from mobilization will be granted to Ready Reservists because of their civilian employment.

(4) *Retention in the Ready Reserve*. All Ready Reservists shall be retained in the Ready reserve for the entire period of their statutory obligation or voluntary contract. Exceptions to this policy are made in this part or may be made by the Secretaries of the Military Departments (10 U.S.C. 269).

(5) *Transfer of National Guard members to the Standby Reserve*. In accordance with section 269(g) of title 10, U.S.C., a member of the Army National Guard or the Air National Guard may be transferred to the Standby Reserve only with the consent of the governor or other appropriate authority of the State, commonwealth, or territory concerned (including the District of Columbia).

(6) *Transfer from the Standby Reserve to the Ready Reserve*. Under section 272 of title 10, U.S.C., any eligible member of the Standby Reserve may be transferred back to the Ready Reserve when the reason for the member's transfer to the Standby Reserve no longer exists (32 CFR part 100).

(7) *Extreme hardship*. The Secretaries of the Military Departments shall screen extreme hardship cases (section 271a(5) of title 10, U.S.C.). Ready Reservists whose immediate recall to active duty during an emergency would

create an extreme personal or community hardship shall be transferred to the Standby Reserve or the Retired Reserve or shall be discharged, as appropriate.

(8) *Miscellaneous screening requirements.* Ready Reservists identified in the following categories shall be processed as follows:

(i) *Civilian employment restrictions.* Ready Reservists who are also DoD civilian employees may not hold a mobilization assignment to the same positions that they fill as civilian employees. These Ready Reservists shall be reassigned or transferred, as appropriate. Reserve component unit civilian technicians, as members of reserve units, are excluded from this provision.

(ii) *Theological students.* Ready Reservists who are preparing for the ministry in an accredited theological or divinity school cannot be involuntarily called to active duty or required to participate in inactive duty training (10 U.S.C. 685). Accordingly, such Ready Reservists (other than those participating in a military Chaplain Candidate or Theological Student Program) shall be transferred to the Standby Reserve (active status) for the duration of their ministerial studies at accredited theological or divinity schools. Ready Reservists participating in a military Chaplain Candidate or Theological Student Program may continue their Ready Reserve affiliation and engage in active duty and inactive duty training.

(iii) *Health care professionals.* Ready Reservists may not be transferred from the Ready Reserve solely because they are students, interns, residents, or fellows in the health care professions. Upon mobilization, they either shall be deferred or shall be mobilized in a student, intern, resident, or fellow status until qualified in the appropriate military specialty as prescribed by the Military Department Secretaries (DoD Directive 1215.4).

(9) *Availability determinations.* The Secretaries of the Military Departments shall make determinations for mobilization availability on a case-by-case basis, consistent with this part, and not by class or group determinations.

(10) *Removal determinations.* Under this part, the Secretaries of the Military Departments shall review recommendations for removal of employees from the Ready Reserve submitted by employers and shall take appropriate action.

(b) *Screening activities by employers of Ready Reservists.* In addition to the Ready Reserve screening activities prescribed in this part to be conducted by the Military Departments, employers of Ready Reservists also have certain screening responsibilities under the law.

(1) *Nonfederal employers.* Under 44 CFR part 333, nonfederal employers of Ready Reservists, particularly in the fields of public health and safety and defense support industries, are encouraged to adopt personnel management procedures designed to preclude conflicts between the emergency manpower needs of civilian activities and the military during a mobilization. Employers also are encouraged to use the Federal key position guidelines contained herein for making their own key position designations and, when applicable, for recommending key employees for removal from the Ready Reserve.

(2) *Federal employers.* Federal Preparedness Circular (FPC) 9 promulgated policy for Ready Reserve screening activities that shall be accomplished by Federal sector employers. To ensure that Federal employees essential to the continuity of the Federal government are not retained as members of the Ready Reserve, the following procedures shall apply:

(i) *Key positions.* Some Federal employees occupy positions that cannot be vacated during a national emergency or mobilization without *seriously* impairing the capability of their agency to function effectively. Because of the essential nature of these positions, the Federal agency head, or designee, concerned shall designate such positions as key positions and shall require that they *not* be filled by Ready Reservists to preclude such positions from being vacated during a mobilization. The Military Department Secretaries shall transfer Ready Reservists occupying key positions to the Standby Reserve or the Retired Reserve or

shall discharge them, as appropriate, under 10 U.S.C. 271(b). However, reserve officers with a remaining military service obligation at the time of their removal from the Ready Reserve may be transferred only to the Standby Reserve, Active Status (section 1005 of title 10, U.S.C.).

(ii) *Key position designation guidelines.* In determining whether or not a position should be designated as a key position, the following questions should be considered by the Federal agency concerned:

(A) Can the position be filled in a reasonable time after mobilization?

(B) Does the position require technical or managerial skills that are possessed uniquely by the incumbent employee?

(C) Is the position associated directly with defense mobilization?

(D) Does the position include a mobilization or relocation assignment in an agency having emergency functions as designated by E.O. 11490?

(E) Is the position directly associated with industrial or manpower mobilization as designated in E.O. 11490 and E.O. 10480?

(F) Are there other factors related to national defense, health, or safety that would make the incumbent of the position unavailable for mobilization?

(c) *Removal Recommendations.* All employers who determine that a Ready Reservist is a key employee, in accordance with the guidelines contained in this part, promptly should report that determination to the cognizant reserve. The letter format shown in Appendix A should be used for such recommendations and should be mailed to the cognizant reserve personnel center listed in Appendix B. All the information shown in the letter format should be provided so the reserve personnel center can assess properly the matter and take appropriate action.

(d) *Resolution of conflicting manpower needs.* In accordance with 44 CFR part 333, the Federal Emergency Management Agency (FEMA) has the authority to adjudicate, before mobilization, conflicts between the mobilization manpower needs of the civilian sector and the military that the Ready Reserve screening process has identified but has not resolved.

(e) *Individual responsibilities of Ready Reservists.* (1) Each Ready Reservist who is not a member of the Selected Reserve is obligated to notify the Secretary of the Military Department concerned of any change of address, marital status, number of dependents, or civilian employment and any other change that would prevent the member from meeting mobilization standards prescribed by the Military Service concerned (10 U.S.C. 652).

(2) All Ready Reservists shall inform their employers of their Reserve military obligation.

§ 44.6 Responsibilities.

(a) *The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA))* shall manage and control the overall Ready Reserve screening program in accordance with section 271 of title 10, U.S.C., E.O. 11190, and House Appropriations Committee Report 95–451.

(b) *The Secretaries of the Military Departments* shall:

(1) Screen, at least annually, all Ready Reservists under their jurisdiction to ensure their immediate availability for active duty.

(2) Ensure that personnel records systems incorporate information on any factors that limit the mobilization availability of a Ready Reservist.

(3) Ensure that all Ready Reservists have a favorably completed National Agency Check (NAC) or Entrance National Agency Check (ENTNAC) on file.

(4) Ensure that Ready Reservists not on active duty are examined as to physical fitness in accordance with DoD Directive 1205.9.

(5) Process members of the Ready Reserve who do not participate satisfactorily in accordance with parts 100, 101, and 115 of this title.

(6) Transfer Ready Reservists identified as occupying key positions to the Standby Reserve or the Retired Reserve or discharge them, as appropriate.

(7) After making a removal determination in response to a petition for such action, promptly transmit the results of that determination to the Ready Reservist concerned and his or her employer.